full bred stallion of equal quality in exchange * * * This bill of sale contains all the agreements of warranty or guaranty made by us in the sale" etc. The stallion did not fulfill the warranty. He died without having been returned. Plaintiff brought action for recovery of the purchase price. *Held,* that the remedy in the bill of sale was cumulative, not exclusive. *Sutherland* v. *Green,* (Mont. 1914), 142 Pac. 636.

Plaintiff sold to defendant a stallion under a contract containing the following provisions: "We guarantee the said stallion to be a satisfactory sure breeder. * * * If said stallion should fail to be a satisfactory sure breeder we agree to take the said stallion back and the said (vendees) agree to accept another stallion of equal value in his place." The stallion did not fulfill the warranty. He died without having been returned. In an action for the purchase price defendant set up the breach of warranty. *Held,* that the remedy provided in the bill of sale was exclusive, and the failure to return the stallion was fatal. *Hickman* v. *Richardson,* (Kan. 1914), 142 Pac. 964.

These two cases, although coming to opposite conclusions, are not in conflict as to the law, but merely in its application. The distinction between them lies in the interpretation of the contract. The rules of law applicable are apparently well settled. Where the contract of warranty provides that if the animal or article fails to fulfill the warranty it shall be returned to the seller, the provision is part of the warranty and must be complied with, and the fact that notice of dissatisfaction is given will not relieve the buyer from the conditions of his contract. *Crouch* v. *Leake,* 108 Ark. 322; *Holbert* v. *Sanzenbacher,* 159 S. W. (Tex.) 1054; *Nutting* v. *Watson,* 84 Neb. 464; *Oltmanns Bros.* v. *Polland,* 142 S. W. (Tex.) 653; *Walters* v. *Ackers,* 31 Ky. L. Rep. 259. If the provision of the contract is not imperative but merely permits the buyer to return the property, he may, at his election, resort to that remedy or the remedy on the warranty, the remedies being cumulative. *Loisseau* v. *Gates,* 140 N. W. (N. D.) 258; *Eyers* v. *Hadden,* 70 Fed. 468; *Halowell* v. *McLaughlin Bros.,* 136 Ia. 279; *Kemp* v. *Freeman,* 42 Ill. App. 500; *Clark* v. *Wooster,* 79 Conn. 126; *Perrine* v. *Serrill,* 30 N. J. L. 454; *Moore* v. *Emerson,* 63 Mo. App. 137.

SPECIFIC PERFORMANCE—PARTIAL PERFORMANCE AND ABATEMENT FROM PRICE.—Defendant was in possession of certain premises under an alleged contract of sale from plaintiff, who brought an action to recover possession. Defendant filed a cross-bill praying for specific performance of the said contract. Plaintiff contended that, since his wife refused to join in the conveyance, specific performance should not be granted, and that defendant should be remitted to his legal remedy for breach of contract. *Held,* that defendant was entitled to specific performance of the contract, with abatement of the value of the contingent dower interest of plaintiff's wife. *Hirschman* v. *Forehand,* (Ark. 1914) 170 S. W. 98.

The cases are in sharp conflict on this point, the tendency of the more recent cases being in accord with the principal case, *Thompson* v. *Colby,* 127 Iowa 234; *Townsend* v. *Blanchard,* 117 Iowa 36; *Payne* v. *Melton,* 69 S. C. 370; *Davis* v. *Parker,* 14 Allen 94; *Walker* v. *Kelly,* 91 Mich. 212; *Martin* v.

Merrit, 57 Ind. 34; *Maas* v. *Morgenthaler*, 120 N. Y. Supp. 1004; *Sanborn* v. *Mackin*, 20 Minn. 178; *Wright* v. *Young*, 6 Wis. 125; *Barnes* v. *Wood*, L. R., 8 Eq. 424. This view is founded on the principle that there is no new contract made by the court, but that the old one is enforced as far as possible. Some cases refuse to grant specific performance (either with or without abatement from the price) on the ground that to do so would enforce an agreement different from that entered into by the parties and that a court of equity should not compel a husband to procure the joinder of his wife, against her will, or suffer the consequences of a contempt. *Barbour* v. *Hickey*, 2 App. D. C. 207; *Hawralty* v. *Warren*, 18 N. J. Eq. 124; *Dunsmore* v. *Lyle*, 87 Va. 391; *Plum* v. *Mitchell*, 16 Ky. L. Rep. 162; *Clarke* v. *Reins*, 12 Gratt. 98. A great many cases refuse to allow any abatement in price for the outstanding dower interest, but grant specific performance where the vendee is willing to pay the entire contract price and accept a conveyance of such interest as the husband has. This would seem to be the most logical and equitable rule, and is undoubtedly supported at least by the numerical weight of authority. *Graybill* v. *Brugh*, 89 Va. 895; *Humphrey* v. *Clement*, 44 Ill. 299; *Watson* v. *Doyle*, 130 Ill. 415; *Cowan* v. *Kane*, 211 Ill. 572; *Steadman* v. *Handy*, 102 Va. 382; *Reilly* v. *Smith*, 25 N. J. Eq. 158; *Bogan* v. *Daugdrill*, 51 Ala. 312; *Cottrell* v. *Cottrell*, 81 Ind. 87; *Anderson* v. *Kennedy*, 51 Mich. 467; *Cady* v. *Gale*, 5 W. Va. 547; *Vindquest* v. *Perky*, 16 Neb. 284; *Hughes* v. *Antill*, 23 Pa. Super. Ct. 290; *Burk's Appeal*, 75 Pa. St. 141; *Lucas* v. *Scott*, 41 Ohio St. 636. Where the land agreed to be sold includes the homestead and the wife refuses to join, specific performance with abatement from price is generally denied upon the ground that such a contract is absolutely void. *Moses* v. *McClain*, 82 Ala. 370; *Phillips* v. *Stanch*, 20 Mich. 369; *Barnett* v. *Mendenhall*, 42 Iowa 296; *Kaiser* v. *Klein*, 29 S. D. 464; *Mundy* v. *Shellaberger*, 161 Fed. 503.

SPECIFIC PERFORMANCE—ABATEMENT FOR OUTSTANDING DOWER INTEREST.—Defendant, by a contract of sale, agreed to convey a "free and clear title" to plaintiff. He refused to perform, because his wife would not join in the deed or release her dower. Plaintiff brought a bill asking for specific performance of the contract, with abatement from price, or a bond of indemnity for the wife's dower interest. *Held*, that plaintiff was not entitled to the decree as prayed for. *Long* v. *Chandler*, (Del. 1914) 92 Atl. 256.

Admitting that as a general rule specific performance with abatement from price will be granted where a vendor is unable to convey a clear title, the court held that an outstanding dower right is of such uncertain valuation and quantum as to make the rule impracticable, saying, "The present money value of the dower right of a wife in her husband's life cannot be fairly and justly estimated, because the quantum of it is not ascertainable until his death, and because of the double contingency of her survivorship of him, and, therefore, there can be no decree for a conveyance by him with an abatement of the purchase price." Indemnity was not allowed, because "it is making for the parties an agreement which they did not make." The decision is at variance with that in the recent case of *Hirchman* v. *Forehan*, (Ark.